

**THE  
DOE RUN  
COMPANY**  
SMELTING DIVISION

James M. Lanza fame  
Environmental Manager

40173228



SUPERFUND RECORDS

TES

Site:	Herculaneum
ID#	MOD 006 266 373
Break:	1.0
Other:	9-4-01

A717

September 4, 2001

Tony Petruska  
USEPA Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

Dave Mosby  
MDNR Superfund Section  
P.O. Box 176  
Jefferson City, MO 65102-3176

Re: Herculaneum AOC Reimbursement of Costs

Dear Sirs:

This is in response to verbal statements made by USEPA Region VII regarding its view that U.S. Government costs associated with the activities of the Citizens Advisory Group ("CAG") and the ATSDR's research efforts in Herculaneum are required to be reimbursed under the Herculaneum AOC ("AOC").

We believe it is clear from the language of the AOC that these costs are not subject to the reimbursement provisions of the AOC. Paragraph 89 of the AOC clearly states that EPA will submit an "appropriate accounting" of future response costs "incurred by the U.S. Government at the Site with respect to this Consent Order." (emphasis added).

Nowhere in the AOC or its accompanying Statement of Work ("SOW") are there any work requirements under the AOC regarding the formation or activities of any CAG or regarding any research by the ATSDR. While Paragraph 137 does indicate that EPA and the MDNR will provide the public an opportunity to review and comment on all approved plans, selected response, or corrective measures, the only public participation activities that might be reimbursable under the AOC would be those which encompass providing notice and copies of documents to the public and the notice and conducting of public hearings where authorized under the AOC. The formation and activities of a CAG and participation by EPA and other U.S. Government personnel are simply not covered by the AOC.

Further, we are concerned that the CAG and ATSDR activities not only are outside the scope of the AOC, but also violate the spirit of the agreement. Not once during the negotiations, which led to agreement and execution of the AOC, did EPA indicate that the AOC would cover activities associated with a nebulous Citizens Advisory Group or the ATSDR. The ATSDR's activities are especially troubling in that it involves research and assessment activities to which Doe Run has no input. Doe Run is specifically

order to make informed decisions. Doe Run is also concerned because ATSDR's activities represent normal governmental activities, which should be carried out by the appropriate Missouri authorities. Further, the ATSDR's activities are funded by general federal taxes for which Doe Run is already a contributor. Doe Run should not have to pay for governmental activities already funded by general taxes.

If, after consideration of our comments, you still believe such costs are required by the AOC, please be on notice that Doe Run will contest such costs. Consequently, all demands for "Future Response Costs" under the AOC should segregate such costs associated with the CAG, including participation by U.S. Government personnel, and the work by the ATSDR. If you have any questions about this issue, please direct them to our in-house counsel, Louis J. Maruchau.

Sincerely,

A handwritten signature in cursive script, reading "James M. Lanzafame".

James M. Lanzafame

cc: L. Maruchau  
D. Vornberg